

# General Terms and Conditions for the Sale of Construction Machinery, Construction Machinery Equipment and Accessories of Kraemer Baumaschinen GmbH & Co. KG

- 1. Scope**
    - 1.1. These general terms and conditions apply to the area of construction machinery sales by Kraemer Baumaschinen GmbH & Co. KG (hereinafter referred to as Kraemer) to companies within the meaning of § 14 BGB [German Civil Code]. For the construction machinery sales and the repair of construction machinery, as well as the spare parts service, specific general terms and conditions apply, which only apply supplementally to this.
    - 1.2. Conflicting conditions of the Customer shall also not apply if Kraemer has not explicitly objected to them.
    - 1.3. For ongoing business relationships, this also applies in the event that Kraemer has not explicitly referred to this during the course of the relationships.
  - 2. Offers**
    - 2.1. Offers and cost estimates of Kraemer are subject to confirmation unless a validity date is expressly mentioned in the respective offer.
    - 2.2. Insofar as drawings, sketches or technical specifications are provided with the offer, these are only approximately relevant.
  - 3. Scope of contract**
    - 3.1. In the absence of a written contract signed by both parties, the written order confirmation of Kraemer is decisive for the scope of the contract and service.
  - 4. Provision of the construction machinery**
    - 4.1. Kraemer shall only ship the construction machinery upon explicit request. The place of performance and fulfillment is therefore the head office of Kraemer, unless expressly agreed otherwise.
    - 4.2. The specification of the delivery period and delivery deadlines are only approximations, as Kraemer has no influence on its own supplies. Therefore, Kraemer shall only enter into default, in any case, after an express written warning.
    - 4.3. The rights under § 281 BGB [German Civil Code] (damages instead of performance) and § 323 I BGB (withdrawal) can only be exercised by the Customer after setting an adequate grace period of at least four weeks (each) in writing twice!
    - 4.4. The delivery period shall begin - in the absence of a written contract signed by both parties - with the date that has been specified in the written order confirmation sent by Kraemer.
    - 4.5. In the case of a request for collateral pursuant to Clause 7.2, the delivery period will be suspended by the period from the request for collateral until the provision of collateral.
    - 4.6. In the event of labour disputes and the occurrence of unforeseen events, which lie outside of Kraemer's influence, or in the event of hindrances for which the manufacturer is responsible, the delivery period shall extend by the duration of the hindering event, however, a maximum of two weeks. This also applies, if Kraemer has already previously entered into default.
    - 4.7. The delivery period is met if Kraemer notifies the Customer about the provision of the purchased object within the delivery period. Kraemer is authorised to perform prior to the expiry of the delivery period. Furthermore, Kraemer is authorised to perform partial services.
  - 5. Reservation of ownership**
    - 5.1. Kraemer shall remain the owner of all delivery objects until all of the Customer's liabilities from the business relationship have been fully repaid.
    - 5.2. The Customer undertakes to insure the purchase object at its own expense against theft, breakage, fire damage, water damage and other damage and to provide evidence of this to Kraemer upon request. If evidence is not provided within 14 days after the request, Kraemer is authorised to take out the aforementioned insurance itself at the Customer's expense.
    - 5.3. In the event that third parties access the reserved goods - e.g. by way of a seizure - the Customer shall immediately notify Kraemer, providing all of the documentation necessary for the legal defence.
    - 5.4. Insofar as Kraemer has registered a business itself as a construction machinery trader, it is authorised to sell the purchase object on within the context of sound management. All claims against third parties arising from this shall be assigned by the purchaser to Kraemer in advance. The purchaser reserves the right to collect the claims. Upon request by Kraemer, the purchaser shall disclose the relevant debtors and provide all of the information necessary for collection of the claims. Furthermore, upon request by Kraemer, the Customer shall notify the assignment to the debtors.
    - 5.5. If the value of the reserved goods serving as collateral for Kraemer exceeds the claims that have not yet been settled by more than 20 %, Kraemer shall be obligated to release the collateral of its choice until the aforementioned value limit is reached, upon request by the Customer.
    - 5.6. A security assignment or pledging of the purchase object is only admissible if this takes place within the context of financing the purchase price and Kraemer is irrevocably specified in the loan agreement as the unconditional recipient of the loan sum.
    - 5.7. The assertion of the reservation of ownership and pledging of the delivery object by Kraemer shall not be regarded as withdrawal from the contract.
  - 6. Transfer of risk / acceptance**
    - 6.1. The Customer undertakes to immediately accept the construction machinery after notification of availability. Insofar as acceptance has not taken place within five working days since the notification, the Customer can no longer call upon a temporary acceptance hindrance with regard to acceptance default.
    - 6.2. Insofar as an acceptance does not take place in accordance with the provision of Clause 6.1, Kraemer shall be authorised to charge ½ % of the invoice amount per month for own storage. In this regard, Kraemer reserves its further rights from acceptance default. It specifically reserves the right to claim further extra costs.
    - 6.3. In addition to the legal consequences of the acceptance default, Kraemer shall additionally be authorised to withdraw from the contract, in the case of acceptance default by the Customer. In the case of such a withdrawal, Kraemer's right to claim extra costs shall remain.
  - 7. Prices / due date / payment default**
    - 7.1. The prices quoted by Kraemer shall be valid from the registered office of Kraemer. The value-added tax shall be charged additionally - in the respective statutory amount.
    - 7.2. After conclusion of the contract, Kraemer shall be authorised at any time to demand that the Customer provides a directly enforceable guarantee of a major German bank as a customs guarantor, in the amount of the purchase price. In the event that the Customer fails to fulfil the collateral request, this constitutes a significant breach of duty pursuant to § 280 BGB. In case of doubt, it is assumed that the lack of provided collateral forms grounds for unacceptability for Kraemer within the meaning of § 282 BGB.
  - 7.3.** The customer can avoid the requirement to provide a bank guarantee by presenting Kraemer with an unconditional loan agreement concluded with a German bank as the lender, which has been confirmed by the bank and in which the loan sum amounts to the full purchase price and the disbursement of the loan sum shall take place irrevocably and directly to Kraemer, concurrently in return for delivery of the equipment.
  - 7.4.** Invoices issued by Kraemer are immediately due for payment. They are payable without any deductions. Ten days after sending the invoice, the Customer shall enter into default without a warning, if Kraemer has pointed this out on the invoice.
  - 7.5.** Insofar as the Customer has provided collateral in the form of a bank guarantee, it can demand return of the bank guarantee concurrently in return for payment of the purchase price.
  - 7.6.** The customer is only permitted to carry out set-offs or retentions with regard to the purchase price claim with legally established or undisputed claims.
- 8. Warranty**
    - 8.1. Kraemer issues no warranty for used construction machinery. Kraemer shall issue a warranty for newly built construction machinery according to the following provisions, whereby the warranty period is limited to 1 year.
    - 8.2. Kraemer is entitled to the right to choose between subsequent delivery and repair pursuant to § 439 BGB.
    - 8.3. In any case, the Customer can only claim further warranty rights, if Kraemer has not attempted to make a repair or supplemental delivery, or this has failed, in spite of a relevant grace period being set in writing of at least two weeks twice.
    - 8.4. If a replacement of parts is made within the context of the repair, the replaced parts will become the property of Kraemer. For spare parts, the original warrant obligation exists, which is extended by the duration of the repair.
    - 8.5. Clause 10 of these GTC supplementally applies to the warranty right of damages.
    - 8.6. A warranty is issued within the context of the legal provisions insofar as Kraemer is regarded as a supplier within the meaning of § 478 BGB.
    - 8.7. Any warranty claims of the Customer against the manufacturer shall not be affected by this agreement. Insofar as the Customer is not a contracting party of the manufacturer's guarantee, but Kraemer is, it undertakes to assign any guarantee claims to the Customer. Kraemer now already points out that the manufacturers' guarantees are bound to compliance with obligations - particularly regular servicing by a professional workshop. Upon request, Kraemer shall provide the Customer with service schedules and the guarantee documentation.
  - 9. Part exchange**
    - 9.1. Insofar as Kraemer takes a machine in part exchange, the condition of the machine at the time of the appraisal inspection by Kraemer shall be deemed as contractually agreed.
    - 9.2. Deteriorations of any type in the condition of the machine during the time until acceptance by Kraemer shall be for the Customer's account and shall entitle Kraemer to reduce the price arranged for the part exchange. The exception from this is normal wear and tear, without any impairment of the machine's functionality.
  - 10. Liability limitation**

Kraemer shall only be liable - insofar as the liability requires culpability on its own merits - for malice aforethought and gross negligence. This shall not apply, if a significant contractual obligation is affected. This shall also not apply if damages are claimed due to injury to life, limb or health.
  - 11. Final provision**
    - 11.1. The legal jurisdiction for all agreements and disputes is Rheda-Wiedenbrück as the registered office of Kraemer.
    - 11.2. German law applies, to the exclusion of the UN Sales Convention.
    - 11.3. Changes to a contract must be in written form, as well as any change to this written form clause. A document that is signed and sent by telefax fulfils this contractual written form requirement.
    - 11.4. If the provisions should be or become invalid, this shall not affect the validity of the remaining provisions. The missing or invalid provision shall be replaced by the provision that comes closest to the intention of the contracting parties, otherwise the legal provision.
    - 11.5. The customer is only permitted to carry out set-offs or retentions with regard to the remuneration claims with undisputed or legally established claims.
    - 11.6. Kraemer is the responsible office within the meaning of the Data Protection Act. The Customer's personal data shall only be collected, processed or used for purpose of contract formation, performance and termination. Advertising use shall only take place for the purpose of own advertising, including recommendation advertising. Sending to third parties shall only take place insofar as this is necessary for performance of the contract.
    - 11.7. The Customer can object to any use of its data for the purpose of advertising, market research or opinion research at any time. The objection shall be addressed by post to Kraemer Baumaschinen, Ferdinand-Braun-Str. 3, and D-33378 Rheda-Wiedenbrück or by e-mail to: info@kraemer24.com.